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KANSAS CONTESTED ELECTION.

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SPEECH

OF

HON. MILES TAYLOR, OF LOUISIANA,

IN THE HOUSE OF REPRESENTATIVES, MARCH 13, 1856,

On the Resolution reported by the Committee of Elections in the Contested-Election case from the Territory of Kansas.

Mr. TAYLOR said:

Mr. SPEAKER: I regret that the rules of this House do not allow me sufficient time to notice all of the various topics that have presented themselves in the course of this discussion. It would have given me infinite pleasure to reply to the remarks of the honorable gentleman from New York, [Mr. WAKEMAN,] who addressed the House yesterday, in which he took occasion to denounce the Administration in good set terms. He spoke of the acts of this Administration in a manner which seemed to fill him with pleasure, but which, it seemed to me, all good citizens should regret. Time, however, will not permit me to pay attention to those remarks, or to vindicate our present national Administration from the most unjustifiable, most undeserved, most unprovoked, and most wanton and unfounded assertions made by that gentleman. But I will venture to say this, before leaving the subject altogether: The policy of this Administration, which has been condemned with such intemperate heat, has commended itself, and will continue to commend itself, to the approbation of all who prefer relations of peace and amity with the other nations of the world, when those relations can be maintained without a sacrifice of national respect, or of national honor, and of all those who are unwilling that the union of these States should be endangered by the unbridled license of those who have set up a law for themselves which is higher than the Constitution. For my own part I believe, without the slightest shadow of doubt, that the acts of this Administration will stand out in bold relief upon the page of history, and that its conduct of the difficult questions intrusted to its management, whether shown by what it has done or by what it has failed to do, will be referred to by the patriots of future times as examples of a wise activity, or of a prudent moderation; when the unconstitutional schemes, the illegal acts, and the treasonable excesses of those with whom the gentleman from New York [Mr. WAKEMAN] is now acting, will be regarded by the curious inquirer as extraordinary displays of that madness to which portions of all communities seem to be subject whenever political action is stimulated by the leaven of what misguided fanatics and enthusiasts do not hesitate to call "a religious excitement," or "a moral agitation."

It would also, Mr. Speaker, give me pleasure to pay attention to the various questions which

were raised yesterday, and particularly to the question as to the character of the existing contest in relation to the right of the sitting Delegate from Kansas, which was chiefly dwelt on by the honorable gentleman who has just taken his seat, [Mr. PURVANCE.] That gentleman referred to this question, and spoke of it as a judicial one; and, for the purpose of supporting the position which his friends in this House have taken, has attempted to draw conclusions as to the manner in which the power of this House is to be exercised in deciding the question involved in the existing contest by reference to the decisions of courts deciding upon private rights. Now, Mr. Speaker, before entering upon the line of argument which I propose for myself, I wish to say a few words for the purpose of showing the entire absurdity of the position which he and his friends have taken upon that particular point. The position which they assume is, that there is a power vested by the Constitution in this House to inquire into the validity of the existing government of Kansas, with a view to the determination of the right of the sitting Delegate to his seat on this floor, and to decide that question for itself, and independently of all the other coördinate departments of the Government.

Mr. Speaker, what would be the result if that position were correct? What would be the consequences of the exercise of the power claimed, on the part of this House for itself, and without the concurrence of the other departments of the Government? There are two Houses of Congress. If this House has the power to decide that question for itself, the House might decide that the existing territorial government in Kansas was a valid government, and admit the person claiming to be the Delegate of the people of that Territory to his seat; and we should then have within the limits of this Hall a Delegate representing the Territory of Kansas. But, at the other end of the Capitol, there is another body which possesses the same constitutional power and, upon the principle which these gentlemen assert, that body could also inquire into and determine for itself upon the validity of the proceedings of that portion of the people on the soil of Kansas who have framed a Constitution, and declared that they now constitute an independent political community, which is clothed with all the rights of a sovereign State. Well, sir, if the individuals elected to the Legislature created by that pretended

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constitution sought, in the exercise of the power which that constitution purports to put in them, to elect Senators to represent them in the Congress of the United States, the persons elected might present themselves at the other end of the Capitol, and that House, exercising the same constitutional power, might decide that the pretended State government was a valid one, and that those persons were rightfully elected Senators from the State of Kansas; and thus would a strange spectacle be presented. Powers expressly conferred upon each branch of the national Legislature by the Constitution would have been rightfully exercised by each in such a manner that it would be constitutionally decided that two distinct, separate, and conflicting governments rightfully existed at the same time over the same Territory! In this department of Government Kansas would be recognized as a Territory, and in the other it would be regarded as a sovereign State. Now, I submit it to gentlemen—I submit it to this House—I submit it to all men of intelligence and common sense—can any principle, which, when carried out, may lead to such consequences, be correct?

It seems to me, Mr. Speaker, that this view of the case must be decisive to the mind of every one who is free from bias—who looks upon questions presented to this House with a single eye to their proper decision; for it is self-evident that the power claimed for the House in its separate capacity not only involves the possible occurrence of absurdities in the practical exercise of it, independently of the other branch of the national Legislature and of the national Executive, but that there might be contingencies in which, if insisted on by the House, it might not only impede the regular action of the Government, but, perhaps, arrest it altogether.

But, sir, it is easy to show the impropriety of granting the power asked for by the Committee of Elections, on other grounds; and, with the view of doing so, will recur to the question really before the House. I shall not attempt a discussion of general topics; I shall not attempt to look into the thousands and hundreds of thousands of cases contained in the volumes of judicial reports which have been or may be cited on the other side in support of their position. These cases may, and probably do, illustrate various principles which are involved in cases of contests with respect to private rights in courts of justice, but can have no application whatever to the question now before us. That question is a political question, and it is this: Shall the resolution offered by the Committee of Elections, that they have power to send for persons, and papers with a view to the investigation of the Kansas election case—shall that resolution be adopted, and the power asked for be granted? The question involved in the adoption of that resolution is: Shall the Committee of Elections take testimony in relation to what transpired in the Territory of Kansas prior to the passage of the election laws of that Territory, under which the election of a Delegate to represent that Territory here was holden on the 30th March, 1855, for the purpose of resolving the questions which properly arise in relation to the right of the sitting Delegate to a seat upon this floor.

By reference to the report of the committee which accompanies the resolution, it will be discovered that the right is claimed on the ground that the election under which the sitting member claims his seat was and is null and void, on two

distinct and different grounds: One is, that the law under which he claims to have been elected is invalid; the other is, that there were illegal votes given in the election holden under the authority of that law.

In respect to the first proposition, it is contended by the contestant that the legislative act is invalid: first, because the persons assuming to act as members of the Council and House of Representatives, constituting the Legislative Assembly created by the twenty-second section of the Kansas act, did not in fact constitute such Legislative Assembly, because they did not assemble and organize and proceed to the transaction of business at the place which was declared in the thirty-first section of the territorial act to be the temporary seat of government; and, second, because the persons assuming to compose the Legislative Assembly which enacted the law under which the election was holden were not elected by the inhabitants of the Territory, in whom the right to elect was vested by the territorial act, but were actually returned by persons not resident within the Territory, who, in violation of law and of the rights of the inhabitants of the Territory, entered it by force in military array, with banners displayed, drums beating, and fife playing.

The first reason assigned for the invalidity of the legislative act under which the election of the sitting Delegate was holden, is based on the notion that the persons elected as Councilmen and Representatives could not act as a Legislative Assembly, nor be in any way vested with the legislative power intended to be conferred on them by the Kansas act, unless they first assembled and organized at the place designated in the act as the temporary seat of government, and continued to assemble there while engaged in the work of legislation.

Mr. Speaker, upon a recurrence to the Kansas act, it will be at once seen that this pretension is without any foundation—that it has not only no foundation in the principles of law, but that it is entirely unsustained by anything contained in the provisions of this particular act. I know that the distinguished gentleman from Indiana, [Mr. DUNN], the other day, alluded to this particular objection, and seemed to attach great weight to it. I cannot but think that his conclusion was arrived at without his making an examination of the act itself. His position that the illegality of the proceedings of that Legislature may be inferred because it did not assemble and it did not act at Fort Leavenworth, the place designated in the act as the temporary seat of government, is founded on an error of fact.

If you refer to the act creating the territorial government of Kansas, what will be discovered? There are three provisions—and three only—in that act which can in any way have any bearing on the subject—I mean, which make mention, directly or indirectly, of a seat for the government of the Territory, or of the place where the legislative power granted by the act was to be exercised.

In the thirty-first section it is declared that Fort Leavenworth shall be the temporary seat of government. In the thirty-third section it is declared that the usual appropriations shall be made for the erection of public buildings at the seat of government. These provisions speak generally of a "seat of government;" they do not say one word about the seat of the legislative power. Gentlemen on the other side, however, insist upon it that all legislative power must be exercised at the

seat of government of every distinct political community. It would not be difficult to show, by both reason and authority, that this is untrue as a general proposition; but that is entirely unnecessary in the present instance, *because the very act creating a Legislature for the Territory of Kansas provides for its being convoked at a place different from that which had been declared to be the temporary seat of government for the Territory.* In the twenty-second section of the Kansas act, after providing for the election of a Legislature and for ascertaining the result of such election, it is declared that "the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the Governor shall appoint."

Now, sir, these three provisions exist in the same act—each is operative; and what is the necessary result? It is true that the temporary government was established by the territorial act at Fort Leavenworth; and it is also equally true that the Governor was vested with authority to assemble the first Legislature to be elected under the authority of the act at any place which he should "appoint." Power was specially given to him to assemble them at any point within the whole extent of that Territory. And then, sir, when the Legislature was assembled at the spot which the Governor himself fixed upon, the act further declares that the legislative power vested in it "shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act." This shows at once that there is nothing in the act which made it necessary for the Legislature to assemble at any particular place; that it was competent for the Governor to select any spot; and it shows, too, that inasmuch as the grant of legislative power made in the act extended to "all rightful subjects of legislation," the Legislature, when convoked by the Governor under the authority of the act, was vested with full power to establish a seat of government and to select its own place of sitting.

The other question is one of fact. It is said that the election, under the territorial act, was invalid, because the Legislature itself was elected by the votes of intruders into the Territory, who overpowered its peaceful inhabitants and excluded them from the polls, or outnumbered them by their votes. Now, what are the facts presented in this case? There is no evidence before this House; there is no evidence before the committee of any kind, unless what is contained in a memorial signed by A. H. Reeder is to be considered as evidence. It is undoubtedly the right of this House to decide upon the claim of any one who presents himself, asserting that he is entitled to a seat upon this floor, in the capacity of Delegate for a Territory; but if he presents himself with the ordinary evidence furnished by the Executive of that Territory, in the usual manner, as proof of his right to a seat, he is entitled to a seat, unless an opposing right is shown. There is not, in the proper sense of the term, an election contest before the House at this time. No individual who was a candidate at the election has presented himself, contesting the right of J. W. Whitfield, the sitting Delegate. No person who was a legal voter at that election has presented himself, contesting that right. The only show of opposition to the right of Whitfield to the seat he occupies, under a certificate of election made in due form of law by the Executive of that Territory, is founded on the simple memorial of A. H. Reeder. This memorial is not under oath. It cannot be

regarded as evidence, in any light in which you may please to regard it. If its statements are false—as I believe them to be—he cannot be convicted of perjury in a court of justice. But, sir, if it were otherwise, A. H. Reeder, the memorialist, upon the plainest principles of law, is incompetent to give testimony in this case.

Gentlemen have alluded to the decisions of courts. If they will only refer to the principles with respect to the competency of witnesses which are universally sanctioned in our courts of justice, they will at once see that A. H. Reeder would not be heard by any judicial tribunal in any case involving the same circumstances. A. H. Reeder was appointed Governor of Kansas in 1854. By the territorial act he was vested with supreme legislative and executive powers, until the machinery contemplated to exist under the territorial government came into existence. He was authorized to cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory. He was authorized to district the Territory, and to apportion the representation in the Council and House of Representatives, among the districts. He was authorized to appoint judges to hold the elections. He was authorized to lay down rules for their government in the receiving of votes, and in making their returns. He exercised those powers. He had a census of population and voters taken. He districted the Territory. He fixed the times and places of holding the first election. Persons appointed by him held the elections under his authority. They were governed in conducting the election by the rules which he himself had established. They returned the names of the persons voted for, and the number of votes, given to them respectively at the election, to him. He received these returns and declared a large majority of the members sitting in each branch of the Territorial Legislature to have been duly elected to their respective Houses, after receiving the returns.

Now it is said, however, that that election of those members was brought about by violence; that it was brought about by armed men who entered the Territory in hostile array, with banners flying and trumpets sounding, and took possession of the polls, and filled the ballot-boxes with their votes, in defiance of the inhabitants. Where was Governor Reeder when this invasion took place?—this overpowering force was exerted. He was then the chief magistrate of that Territory, and he continued to be so while the Legislature, thus elected, was in session; and he continued to hold the same position until a few weeks only before the election, with respect to which this contest has arisen. Governor Reeder was in possession of all the means for obtaining information. The officers who held the first election were chosen by him, and were under his control when they made their returns. He was then in possession of the entire legislative and executive power of the Territory. If what he now asserts had really transpired, it could not have been unknown to him. If such occurrences as he describes in his memorial did take place, it must necessarily have been in the presence of the officers who held the election, and of all those citizens who repaired to the places where the elections were held for the purpose of voting; and he must have had entire knowledge of all the facts. If the alleged facts had had any existence, what would have been the duty of Governor Reeder, when the returns of the election were made to

him? Why, sir, he was bound by his oath of office to reject the returns, and to call upon the Executive of the United States to repress such disorders, if the power which he wielded was not sufficient. But he did nothing of the sort, and approved the returns, called the Legislature together, and when it had assembled at the time and place appointed by him, he recognized it as the Legislative Assembly of the Territory. Where, then, I ask, did Governor Reeder get information as to the facts recited by him in this memorial? It was not in the Territory, where they are said to have transpired, and where all those having any knowledge of the facts connected with the election were to be found. It must have been in Pennsylvania; for we all know that Governor Reeder left the Territory of Kansas, and was engaged during the past summer in making stump speeches through the State; and, so far as we know, he has scarcely visited the Territory of Kansas since that time.

Now, Governor Reeder was perfectly silent when it was his duty to speak; when he was bound by his oath of office to interfere, if what he now alleges were true. He failed to do so. But the moment he is removed from office, and while he is in the State of Pennsylvania, he suddenly becomes illuminated—his mind is filled in the latter part of 1855 with information in regard to an election holden under his authority, and in his presence in the early part of the same year, some fifteen hundred or two thousand miles from the spot where he first got light, and makes these allegations. The singular increase in Governor Reeder's knowledge, which has apparently grown out of the diminution of his means for acquiring it, reminds me very much of an incident which is spoken of in literature. A distinguished dramatic writer, a century or two ago, put into the mouth of one of his heroes this expression:

"My wound, it is so great because it is so small."

A wit who was present at the representation of the play in which the expression occurred, on hearing it, at once cried out:

"It would have been greater had it been none at all."

Now, Governor Reeder's knowledge seems to be pretty much dependent on the principle of these two expressions. While the Governor was in Kansas, with the control of the executive power of that Territory, and was in communication with the officers who held the elections and with the inhabitants who voted at them, he had no knowledge of any facts which, in his judgment, would authorize him in his official capacity to withhold the election certificates of the members of the General Assembly not yet in existence. But when he withdrew from Kansas and returned to Pennsylvania, where he was engaged during the summer in making stump speeches, fifteen hundred or two thousand miles distant from the scene of those remarkable displays, he becomes suddenly so well informed in relation to them, that he thinks himself justified in attempting, upon their authority, to have a government overthrown which has existed nearly two years, and which has before sent a Delegate to the Congress of the United States, who claimed and was admitted to a seat here upon a certificate that he was duly elected, signed by Governor Reeder himself. As Governor Reeder had no knowledge of the outrages which he now pretends were perpetrated on the inhabitants of Kansas at the first election holden in the Territory, while he was in that Territory as its Gov-

ernor, and as he has since, during his absence, apparently laid in a good stock of it, is it not likely, I would ask, that his knowledge of these outrages would have been much greater if he had never been in Kansas at all, or had gone further off?

But, whatever may be the opinion upon this subject, one thing is perfectly certain: Governor Reeder could not be heard in a court of justice as a witness to impeach the validity of a Legislature, the members of which were convoked on his summons, and held their seats only under the authority of certificates that they were duly elected, granted by himself. It is a principle recognized in all courts of justice, that one who has put his name upon a negotiable instrument and given it currency, cannot be permitted, by his own testimony, to invalidate it. If this principle obtains with respect to a negotiable instrument when the one who gives it currency is under a simple moral obligation to not countenance an illegal contract by giving the sanction of his name to the instrument under which it is concealed, how much more propriety is there in extending it to a case like the present one, where the person who gave the sanction of his name to the election certificates of the members of a Legislature, was acting under an official oath, and under a solemn sense of high public duty? If it were important to establish the correctness of the principle just referred to by authorities, it would not be difficult to cite hundreds of them from our reports of adjudicated cases. This, however, is not necessary; and I will mention but a single case (*Bank of United States vs. Dunn, 6 Peters, 51*) in which the principle is broadly laid down by the Supreme Court of the United States.

The reason for the adoption of such a principle in the investigation of private rights before courts of justice, is obvious. It is the result of that innate fear of being imposed on by falsehood, which all men feel when any one who is known to have been on both sides of any question comes forward to speak upon it; and the action of judicial tribunals in refusing to hear persons so situated, as witnesses, is precisely analogous to that of the Satyr in the fable, who thrust forth the stranger he at first received into his dwelling, because he warmed his hands with the same breath that he cooled his soup with.

I have no personal knowledge of Governor Reeder's conduct in this business; and my opinion with respect to his competency as a witness upon any point connected with it, is necessarily based upon the facts presented in the record. But this I am constrained to say—he is convicted by his own record. His own acts, as they stand upon it, show that he cannot be heard; that he ought not to be heard; and that he is entitled to no credit whatever if he is heard. If the facts which he now alleges in his memorial, with respect to the first election for members of the Territorial Legislature, holden under his authority, are true, he was guilty of the grossest violation of an official oath, and of the most shameless dereliction of a high public duty ever yet known to the American people, when he issued the certificates declaring those members duly elected, and when he recognized them as composing a legally-constituted Legislature, after they had been convoked on his call; and if, on the other hand, the facts alleged in his memorial are not true, why, then, he is guilty of a deliberate falsehood, and utters it with as malignant a design to do public mischief, as ever yet disgraced and blackened any

violation of the truth. So that, no matter from what point of view you regard him, as now exhibited in the public records of the country, he has no right to be heard upon the point in question; nor can any one who is engaged in the discharge of a public duty give any weight to his representations, without striking at the very foundation of those principles, the maintenance of which has been hitherto considered, in all civilized society, as essential to success in all public inquiries after truth.

Now, sir, there is no case here which can properly engage the attention of the House, for there is no evidence before us which will justify any inquiry into the circumstances connected with the election of Whitfield prior to the date of the certificate; but if it were otherwise, and a case did exist, there is no power on the part of the House to engage in such an inquiry at this time. This House has, under the Constitution, the right "to judge of the elections, returns, and qualifications of its own members." That clause of the Constitution applies in terms to the "members" of the House, and does not necessarily embrace the Delegates of Territories. It cannot be extended to Delegates, unless this position be true; that is to say, that where the reason of the thing is the same, the provision, whether it be of a constitution or of a law, shall have the same application. If that be so, those who advocate the adoption of this resolution are placed in this dilemma: either the constitutional provision does not apply to the election of Delegates; and then, as no power can exist in either House of Congress, unless it is given by the Constitution, or by an act of Congress, there is no authority whatever in the House to engage in any investigation with respect to the election of a Delegate from a Territory, beyond the mere examination of the credentials presented by him; or the act of 1851, on the subject of contested elections, also applies to the election of Delegates from the Territories. If the act of 1851 applies, then this matter is not rightfully before us, and no inquiry as to Whitfield's right to sit here as a Delegate can be entertained, for that act was adopted for the purpose of limiting the period within which inquiries of this nature should be gone into, and for regulating the manner in which the proceedings had in real contests should be carried on. Now, by the provisions of this act, if they apply to elections of Delegates, and if the provisions of the Constitution apply and give authority to the House, no contest can be carried on with regard to the right of a sitting Delegate, unless it were begun within the time fixed, and was carried on in the manner provided for in that statute. That time has passed by, and the requirements of the act have not been in the slightest degree complied with.

And this is the position in which gentlemen on the other side of the House are placed. Either the House has not the power under the Constitution, or the act of 1851 applies. If the act applies, then it is clear there can be no contest on behalf of any individual with respect to the seat of Mr. Whitfield. If the act does not apply, it is because the constitutional provision is limited to cases of elections of members of the House of Representatives. No matter which horn of the dilemma is taken, the right to grant this authority to send for persons and papers asked for by the committee, can have no existence with respect to this particular election.

Mr. WAKEMAN. I would like to ask the

gentleman from Louisiana a question. I would like to inquire of him whether, if he admits the constitutional right of each House to judge of the election, returns, and qualifications of its own members, he denies the right of the House of Representatives to judge of the election, returns, and qualifications of Delegates from the Territories?

Mr. TAYLOR. The House would have a right to decide upon them under the territorial act of Kansas. It would have a right to look at the credentials presented by those who come here, and to say whether they were, or were not, such as were required by the territorial act. The House would have no authority to go beyond that, and for the very simple reason that the House would be restricted in their inquiry within precisely the same limits which the Government of the nation would be restricted to when the agent of a foreign Government comes here and claims the right to be received as its representative. In cases of that kind there are only two questions to be determined: first, are the credentials presented by him in due form; and second, were the credentials granted to the agent by the government of the country from which he came? The first question would be decided upon a simple inspection of the credentials submitted. The second one would be determined by an inquiry into a single fact, viz: is the government which granted the credentials in the actual exercise of power over the people of the country which the agent claims to represent? If this fact is ascertained, no inquiry is gone into as to the legitimacy of the government. Whether it is the government *de jure*, or a government *de facto*, is entirely immaterial. The government in the actual possession of power over the country is entitled to be represented, and can, by its acts, bind the country over which it exercises actual dominion.

The Delegate of a Territory is in no sense a member of the House of Representatives. He is the mere agent of a distinct portion of people who are authorized by law to associate themselves together in a particular manner. This question was presented to the Congress of the United States in the first contested-election case, (that of James White: Contested Elections, p. 83,) which grew up in relation to the right of a Delegate from the Territory south of the Ohio river to a seat on this floor. In that case, every member who spoke on the subject—and among those who did speak upon it were Mr. Madison, Mr. Swift, Mr. Dexter, and Mr. Smith of South Carolina—regarded the Delegate as not a member. They decided that he was simply an agent—a sort of envoy from one political community to another political community. And such was the clearness of their opinion on that point, that, when the question arose, Should he, or should he not, be sworn? the House decided that no oath could be administered to him. It was even said by some of the members that, if he were willing to take it, it would be improper to allow him to do so.

As a mere question of international law—as a question which has been examined and decided upon by all the regularly-constituted authorities of this Government, in regulating our intercourse with other nations, it has always been held by us that no people—no Government, has a right to go behind the credentials which emanate from the Government *de facto* of a foreign State, or of a distinct community, for the purpose of inquiring whether that Government is also a Government *de jure*. And the same principle seems to have

been distinctly recognized as applicable to the cases of Delegates from our own Territories, by the action of this House in the contest as to the right of Jonathan Jennings to be received as the Delegate from the Territory of Indiana, which took place in 1809. In that case the committee charged with the investigation of the case, reported (*Contested Elections*, p. 243, &c.) that, "After a deliberate examination of the laws relative to the Indiana Territory," they "consider it to be their duty to investigate the authority under which the election of Delegate to represent that Territory was held, previous to an examination of the irregularities suggested; because, if the election was held without authority of law, it was void, without regard to irregularities." The committee did make the investigation proposed, and decided that the proclamation of the Governor, directing the election of a Delegate, was made without any authority of law. They then submitted a resolution declaring "That the election held for a Delegate to Congress for the Indiana Territory, on the 22d of May, 1809, being without authority of law, is void; and that, consequently, the seat of Jonathan Jennings, as a Delegate for that Territory, is vacant." When this resolution was considered by the House, a motion was made to strike out the words, "without authority of law," which was negatived by a vote of 51 to 45. The whole subject was fully debated; and when the question on the adoption of the resolution as reported was put, the House rejected it by a vote of 83 against 30. And this is the answer to the question put to me.

And now, Mr. Speaker, it is proper for me to say something on another question. The advocates of this resolution assume that, if their resolution be not adopted—if this right be not given to them to send for persons and papers, it is because the members on this side of the House are disposed to smother inquiry. They are mistaken. The members on this side of the House are disposed to permit no irregular, no improper, no unconstitutional exercise of power with regard to a question which is to be regulated on fixed and settled principles. They are unwilling that an act of power should be perpetrated by this House which may lead to consequences that no man can look forward to without apprehension—an act of power which, if taken as a precedent, may have the effect hereafter of placing two coördinate branches of the Government in opposition to each other—which may make this House recognize a particular district of country as a State, and the House at the other end of the Capitol as a Territory; or make this House recognize it as a Territory, and the House at the other end of the Capitol recognize it as a State. So far as relates to the questions involved—so far as relates to the validity or invalidity of the present government of Kansas—so far as relates to the validity or invalidity of the laws adopted there, that is a question which passes beyond the jurisdiction of this House, as a separate House, and beyond the jurisdiction of the Senate as a separate body. It is a question which appertains to the Congress of the United States.

The very eloquent gentleman from Maryland, [Mr. Davis,] who addressed the House yesterday upon this subject, said much that I concur fully in. But he seemed to have fallen into what I conceive to be a very grave error, in relation to the question of right, and in relation to the question of power. That gentleman looked to the legislation of the country as it now stands. He

looked upon the part which the Executive of the country is bound to play under the laws; but he did not seem to embrace the whole subject. He did not take that enlarged view which it is necessary should be taken when we come to examine questions of this nature, and to determine upon our action. He asserted that the Executive of the United States was vested with the sole power of determining whether the government which now exists in Kansas was the rightful government.

Now, while I agree with him, that at this time the Executive is vested with that authority, I for one did not concur with him in the opinion that that power is supreme, and that the exercise of it is final and conclusive. The executive power of the Government, so far as it has any connection with this subject, is limited to taking care that the laws of the United States "be faithfully executed." It is the duty of the President of the United States to enforce all the acts of Congress; and the right to which the gentleman from Maryland referred as now vested in the President is specially conferred upon him by the legislative action of Congress.

The Constitution of the United States declares that, in the event of an insurrection in any of the States against State authority, Congress shall have power to suppress that insurrection; but the Constitution is silent as to the means that are to be made use of. The power itself was devolved upon Congress; but before it could be properly exercised it was requisite that provision should be made for it by law. Well, sir, very soon after the organization of the Government, troubles grew up in different States. There was an insurrection in Pennsylvania growing out of the operation of the excise laws. There was an insurrection in Massachusetts growing out of some other local cause. When the first of these insurrections occurred, the Government of the United States had not yet provided for that contingency. In 1792, however, when the first emergency arose, the national Legislature passed an act giving to the President authority to wield the military force of the country for the accomplishment of the object contemplated in the Constitution. In 1795, a subsequent difficulty having occurred, the public attention was again directed to the subject, and that legislation was somewhat modified; but the legislation of 1795 continues to be the existing legislation upon the subject. It is by virtue of that legislation that the Executive now possesses the power to which the gentleman from Maryland alluded. This power, however, is not an independent power, to be exercised by him without supervision or inquiry from any other department of the Government. The manner in which he exercises it is always open to inquiry.

It is competent for the Congress of the United States, at any time, in their legislative capacity, to repeal that law. It is competent for the Congress of the United States, in its legislative capacity, to revise the manner in which that power has been exercised, or to provide new means and new rules for its exercise in the future. But, sir, the time to which I am limited by the rules of the House will not permit any elaboration of these views, or, indeed, allow me to present many others which occur to my mind, to the consideration of the House.

I will refer, however, for a moment, to a case which once engaged the public attention very much in the United States; and which, if looked

at rightly, will furnish lessons that may be useful to us in this emergency. I refer to the case which was alluded to yesterday in debate—the Rhode Island case. If that case be carefully examined, I think that the facts which it presents for our consideration will admonish us that the steps proposed to be taken by the advocates of this resolution are wrong—that the steps proposed to be taken by these gentlemen are dangerous ones—that the contemplated decision by this House of questions of the greatest national importance, and which are entitled to, and should receive the gravest consideration, not only of all the coördinate branches of the Government, but of the whole American people, ought, in justice to the country and to the cause of good government, to be postponed to another, and a more fit occasion.

In Rhode Island there was a charter government existing which limited the exercise of the political power of the State to a small portion of its population. In the progress of events, the portion of the people who were excluded from all exercise of political power, and who saw themselves surrounded by other States with more liberal institutions—institutions under which the right of suffrage and eligibility to office, were conceded to a much larger portion of the population—became discontented. They asserted that there were provisions in the charter which imposed improper restraints upon their rights. They began agitating; but, when they began to agitate, they found a government in existence—a government which, up to that time, had been always regarded as a government *de facto* and *de jure*. Well, sir, after agitating for a length of time, they did what the advocates of this resolution uphold the people in Kansas for doing. They proceeded, by their own authority, to elect delegates, who met for the purpose of framing a constitution and government for the State of Rhode Island, to displace and put aside the then existing government. These delegates met together and framed a constitution. That constitution was submitted to the people, and, at the election holden to decide upon it, not only a very large majority of the people of the whole State voted for the new constitution, but a majority of those to whom the exercise of the power of the State was given by the charter government itself, gave it the sanction of their votes. The body of the people of Rhode Island then proceeded, under the authority of the new constitution, to elect State officers. They elected an Executive and a Legislature, and this Executive and the Legislature, as in the case of the constitution, received not only the vote of a majority of the people, but a majority of the legal voters under the charter. But the authorities under the charter would not yield up the power which it had placed in their hands, and claimed to be the government *de facto*. The contest ripened into hostilities, and the danger of a war between the parties became imminent. Military forces were arrayed on one side and on the other; and in that critical, menacing conjuncture, that occurred in Rhode Island which has occurred in Kansas. The Executive *de facto* called on the Executive of this nation to wield its power to put down insurrections, to prevent collisions and the shedding of blood by brethren in deadly conflict. The President of the United States declared his purpose to sustain the government *de facto*, as the one known to the constitution and laws; and what was the result? There was no hostile conflict. The Legislature elected under the constitution thus set up separated—the Executive fled. The govern-

ment *de facto* was permitted to exercise all its powers; and what then happened? Were those who thus yielded, trampled to the earth—despoiled of their rights—because they submitted to the existing government, oppressive though it seemed to be, rather than engage in a conflict not sanctioned by law? No, sir; the evils complained of by them were remedied by their presenting themselves at the polls at the subsequent election, and speaking through the ballot-boxes. The wrongs which they had endured were redressed by their own strength and power. Not exerted on a field of battle—not displayed amid scenes of turbulence and strife, and filling a whole country with fear “that anarchy was come again,” but by the decided yet peaceful expression of their opinions at the times and places, and in the modes prescribed by law. And now the Executive of the United States has been called on in the present case to exercise the same power as in the Rhode Island case, and under what may possibly be, similar circumstances; and he has declared his intention to exercise that power. That power will be exercised if it be necessary, as it would have been exercised in Rhode Island; first to put down that illegal assemblage which now claims to exercise the powers of government in the Kansas Territory, under the authority of a constitution which has been set up by them and their confederates in opposition to the existing government which was established there by the concurrent action of the National Congress and the Executive; and secondly, it will be exerted for the purpose of preventing the intrusion of all those into the Territory, with the intent and design to interfere with the exercise of the rights given to the inhabitants of that Territory by the territorial act; whether they are pro-slavery men, or anti-slavery men—whether they came from the North or from the South. And it will be exerted, too, to prevent or repress the disorders and violence, no matter how excited or provoked, which would be calculated to hinder or disturb the exercise of the right of the real inhabitants of the Territory to the most perfect freedom of suffrage.

The contestant in this case claims to be a Delegate representing the people of the Territory of Kansas. Let us not forget that that contestant was Governor—the chief executive authority in the Territory of Kansas when these disturbances, which have been so loudly spoken of, are alleged to have taken place. If they had had any existence, it was his duty—and he was false to his obligation to the country, he was false to his oath of office, if he failed to discharge it—to inform the Executive of the United States of their occurrence, and to call on him to interpose his power to prevent their recurrence or to repress them. Had he done so—admitting for one moment that any facts countenancing the contestant’s present allegations were in existence at the time he now speaks of—the troubles and disturbances which it is said have since broken out there would never have occurred, and frightened men from their propriety. But he failed to discharge his duty, if the facts did exist; and now he urges on his friends here, after he has violated his duty to his country in one department of the Government, to violate their duty to the nation, their duty to the Constitution, their duty to the rights of man in another department of the Government; and insists that they should take a step in opposition to every principle of public law—to every dictate of sound policy—and to every motive of personal propriety—which may result in a contest in which fra-



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ternal blood may be shed, unless the spirit of lawlessness and violence which is now stalking through the land is laid by counsels of mingled firmness and moderation.

Now, sir, we have a high duty to perform; and the question arises: How shall we perform it in acting upon the question before us? My own opinion is, that we shall best discharge it by throwing aside this contest, which has no existence in fact; for which there is no legal ground; with respect to which there is no evidence on which men having respect for themselves can act; and by allowing time to pass by for the exercise of the power which the national Legislature has conferred on the Executive. Let us wait until another election arrives. If it be true, as these gentlemen assert, that there is a large majority of persons entertaining the sentiments which they seem to entertain now settled in Kansas Territory, what would be the result of such a course? If the executive power be exercised, the intrusion of armed men—of those persons spoken of as border ruffians—will be prevented, and any violence, no matter from what quarter it comes, will be repressed, and the inhabitants—the *bona fide* settlers—will have an opportunity of giving expression to their sentiments freely through the ballot-box. Then the changes which they desire to make in the legislation of the country will be, made peacefully, rightfully, through the exercise of the only power which is legitimate—the only power which any American citizen can desire to have exerted in such a contest—the power of the individual citizen, acting with his peers and speaking with sovereign authority through the ballot-box.

But, sir, it may be said that a different result may take place. It is possible, but I think that we ought not to allow possibilities that are extremely improbable control, or even influence, our action. It is our duty to wait until that experiment is tried. If the Executive does not honestly exercise his power, if these invasions are not prevented, if these instances of pretended violence are not repressed, then will be the time for this House, in the exercise of its constitutional duty, to act. This House is the great inquest of the nation. It may institute an inquiry into the conduct of the Chief Magistrate. It may prefer against him articles of impeachment for violation of his official duty. I go further; If the Executive should fail to do his whole duty, it would then not only be proper for this House to proceed against him by preferring articles of impeachment, but it would be the bounden duty of Congress—of the national Legislature—to notice it, and take action on the subject. It would then be competent for them to engage in inquiries for the purpose of ascertaining the facts, not for the purpose of deciding a contested election in this House, not for the purpose of deciding a contested election in any other House, but for the purpose of informing the legislative mind, so that it could determine whether it should or not

exercise the legislative power for the purpose of exercising the power of Kansas in the exercise of their just rights, or to change or modify what now exists.

This, sir, according to my view, is the true course; and it is not only the course pointed out by reason, but it is the course which every true lover of his country ought to insist upon, because you cannot tell in the unknown future what may follow improper action. Why, sir, this is a Government which is based solely upon the consent of the citizens; this is a Government in which all power is to be exercised rationally; this is a Government, whether it be regarded as extending over all our possessions in virtue of the Constitution of the United States, or whether it be regarded as existing in the particular States under the State constitutions, or in the organized Territories under the authority of the national Legislature,—it is, I say, a Government which exists under and by authority of law, and in which there are means provided for the exercise of all power in a peaceful and legitimate way. If the course which I have indicated be pursued, no matter what difficulties may exist in Kansas, they will terminate peacefully. Right will in the end triumph.

If, on the contrary, by the irregular action of the House, an extraordinary step should be taken— if, by the irregular action of this House, the excitement which has heretofore existed, and which it is said now exists, shall be heightened until it terminates in conflict, who can tell what will be the result? Who can tell how far the conflagration will spread before the unholy fires of fanatical, lawless, revolutionary agitation are quenched in blood? This country has been for three quarters of a century a spectacle which has filled the whole world with admiration; one in which all the powers of a great nation have been exercised peacefully, and in which all those difficulties which almost necessarily arise from time to time in the best-regulated Governments, and seem to threaten them with public commotions or civil war, have been encountered and overcome by the exercise of the popular reason, to the exclusion of popular force. If the will of the promoters of this contest is to prevail in this House, it will present that spectacle no longer. No, sir; if the counsels of these men find favor with us, a few short weeks or months may be sufficient to fill a land where it has been all sunshine with “clouds and darkness;” and amid the surrounding gloom such contentions and conflicts may arise in which section may be arrayed against section, State against State, and perhaps man against man, in deadly strife, as would make all men who feel an interest in the success of a republican form of government, and who believe in the capacity of men for self-government, to shudder with fear, and fill them with forebodings of the speedy downfall of all free institutions dependent on the popular will.

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